

**Before the
Federal Communication Commission
Washington, D.C. 20554**

In the Matter of)
NPCR, Inc. d/b/a Nextel Partners) CC Docket No. 96-45
Petition for Designation as an)
Eligible Telecommunications) DA 03-4113
Carrier in the State of Florida)

**Comments By:
Fred Williamson & Associates, Inc. ("FW&A")**

On behalf of:

**Chouteau Telephone Company, an Oklahoma ILEC
H&B Telephone Communications, Inc., a Kansas ILEC
Moundridge Telephone Company, Inc., a Kansas ILEC
Pine Telephone Company, Inc., an Oklahoma ILEC
Pioneer Telephone Association, Inc., a Kansas ILEC
Totah Telephone Company, Inc., a Kansas and Oklahoma ILEC
Twin Valley Telephone, Inc., a Kansas ILEC**

I. Background And Summary Of Comments

FW&A is a consulting firm located in Tulsa, Oklahoma that represents small rural Incumbent Local Exchange Carriers (ILECs) that operate in Kansas and Oklahoma. These ILECs serve rural areas that have, on the average, three to five customers per square mile and they have placed or are in the process of placing facilities that will enable nearly 100% of their customers (even those in the most remote areas) to have access to broadband and other advanced services.

On September 16, 2003, NPCR, Inc. d/b/a Nextel Partners (Nextel) filed a petition with the Commission seeking designation as an Eligible Telecommunications Carrier (ETC) in certain rural study areas in the state of Florida. FW&A and the rural ILECs it represents are filing comments in this proceeding because a decision in this proceeding, like the decision in the Virginia Cellular proceeding,¹ could affect pending ETC cases in the states where those rural ILECs provide service. FW&A believes that the Commission should not continue to make decisions in these ETC petitions in advance of a Joint Board recommendation on ETC public interest criteria. However, in the event that it does continue to decide these cases, the Commission indicated that the public interest analysis it utilized in the Virginia Cellular decision would be applicable to all ETC petitions (and that would include the Nextel petition) for ETC designation in rural areas.² As a consequence, in these comments, FW&A:

- a) Summarizes the Virginia Cellular analysis utilized by the Commission.
- b) Evaluates the Nextel petition using the Commissions Virginia Cellular analysis.

¹ Virginia Cellular Petition for Designation as an Eligible Telecommunications Carrier, CC Docket No. 96-45, Memorandum Opinion and Order, Released January 22, 2004 (Order).

² Id, page 3.

c) Discusses additional public interest analyses which is critical for a substantive public interest analysis.

- Services for which support is provided must be the services defined by the Joint Board and the offerings must meet the Act's universal service requirements.
- The applicant must prove a need for the funding.
- The applicant must be accountable for promises made to the Commission regarding use of support funding to improve service coverage and service quality.
- There should be measurable competitive benefits – not just the rhetoric.

d) Evaluates the Nextel petition based on the additional public interest analysis.

FW&A and the ILECs it represents believe that the Commission's decision in Virginia Cellular to (a) Impose a more stringent public interest analysis for ETC designation in rural ILEC service areas and (b) When determining if the public interest is served, placing the burden of proof upon the ETC applicant, is an initial step toward developing a competitive and technologically neutral ETC designation, public interest analysis for areas served by rural ILECs. However, as is shown in these Comments, the Commission's Virginia Cellular public interest analysis is incomplete and could, at odds with the public interest and the Act's requirements result in approval of an ETC's petition when a more complete analysis would demonstrate that that petition should be denied.

As FW&A's Comments demonstrate, based on both the Commission's Virginia Cellular public interest analysis and the additional analysis presented in these Comments, an ETC designation for Nextel would be at odds with the public interest because:

- It would not provide additional competitive choices for customers.
- Nextel has no cost-based need for support and thus providing funding would have a negative impact on the Universal Service Fund.
- Nextel does not provide universal service packages that offer a just, reasonable and affordable rate with a sufficient level of local usage.
- Nextel has not provided a specific network plan, with associated time frames for placement of facilities to assure that (a) It will provide service through the entire service areas of the rural ILECs in which it seek ETC designation and (b) It will provide quality services throughout that service area.

For these reasons, FW&A and the ILECs it represents urge the Commission to deny Nextel's petition for ETC designation.

II. The Virginia Cellular Memorandum Opinion and Order³

In this Order, the Commission articulated additional public interest requirements that must be met by a carrier if it is to be designated as an ETC by the Commission, pending the further public interest ETC recommendations of the Federal-State Joint Board. FW&A and the ILECs it represents believe that the Commission's decision to impose "...a more stringent public interest analysis for ETC designation in rural telephone company service areas..."⁴ and when determining if the public interest is served, placing "...the burden of proof upon the ETC applicant..."⁵ is an initial step toward developing a

³ Virginia Cellular Petition for Designation as an Eligible Telecommunications Carrier, CC Docket No. 96-45, Memorandum Opinion and Order, Released January 22, 2004 (Order).

⁴ Id., page 3.

⁵ Id., page 12.

competitive and technologically neutral ETC designation and universal service support system.

In this Order, in addition the Act's Section 214 requirements⁶ to provide and advertise the defined universal services, the Commission required Virginia Cellular (and any other ETC seeking ETC designation from the Commission)⁷ to:

1. Demonstrate the benefits of increased competitive choice as a result of its ETC designation.⁸ The Commission found that:
 - The designation will provide a choice of providers.⁹
2. Demonstrate the impact of multiple ETC designations on the Universal Service Fund.¹⁰ Although the Commission expressed concern about the growth in universal service funding requirements to competitive ETCs and indicated that it was awaiting the Joint Board's recommendation for a framework that would assess the overall impact of competitive ETC designations on the universal service fund,¹¹ the Commission stated that:
 - "...this ETC designation will not dramatically burden the Universal Service Fund..."¹²
3. Demonstrate the unique advantages and disadvantages of the competitor's service offerings.¹³ The Commission found that the applicant provides:

⁶ Communications Act of 1934 as Amended by the Telecommunications Act of 1996 (Act), Section 214(e)(1).

⁷ Id., page 3.

⁸ Id.

⁹ Id., page 7.

¹⁰ Id., page 3.

¹¹ Id, pages 15 and 16.

¹² Id., page 15.

¹³ Id., page 3.

- Service to residences to the extent that they do not have access to the public switched network through the ILEC.¹⁴
 - Mobility which will assist consumers who must drive significant distances to critical community locations.¹⁵
 - Access to emergency services that can mitigate the risks of geographic isolation associated with living in rural areas.¹⁶
 - Larger local calling scopes so that customers will be subject to fewer toll charges.¹⁷
 - A variety of local usage plans and that the applicant's current plans include access to the local exchange network and many of the plans include a large volume of minutes.¹⁸
4. Demonstrate commitments made regarding quality of telephone service provided.¹⁹
- Although the Commission found that the applicant's offerings may be subject to dropped calls and poor coverage,²⁰ the Commission allowed the Applicant to commit to alleviate these problems by:
- Building new towers and facilities to offer better coverage.²¹
 - Comply with the Cellular Telecommunications Industry Association (CTIA) Consumer Code for Wireless Service.²²

¹⁴ Id., page 14.

¹⁵ Id., page 7 and 14.

¹⁶ Id., page 14.

¹⁷ Id.

¹⁸ Id., page 10.

¹⁹ Id., page 3.

²⁰ Id., page 14

²¹ Id.

²² Id., page 14. See also footnote 94 on pages 14 and 15, which explains that the CTIA code provides that wireless carriers will (1) disclose rates and terms of service to customers; (2) make available maps showing where service is generally available; (3) provide contract terms to customers and confirm changes in

- Providing to the Commission, annually, the number of customer complaints per 1,000 handsets.²³

5. Demonstrate the competitive carrier's ability to provide the supported services throughout the designated service area within a reasonable time.²⁴

- The Applicant committed to provide service throughout its licensed service area.²⁵
- Where the Applicant seeks to subdivide a rural ILECs study area, a population density analysis must show that the applicant is not serving only the low-cost areas to the exclusion of high-cost areas.²⁶
- If service is not available to a requesting customer within its licensed service area, the Applicant committed to provide service by determining (1) If the customers equipment can be modified; (2) If a roof mounted antenna or other equipment can be deployed; (3) If adjustments can be made to the nearest cell tower; (4) If adjustments can be made to network or customer facilities; (5) If resold service can be used; (6) If an additional cell site, cell extender or repeater can be employed.²⁷
- If Applicant cannot provide service, it will notify the requesting party and file an annual report to the Commission detailing the number of unfulfilled service requests.²⁸

service; (4) allow a trial period for new service; (5) provide specific disclosures in advertising; (6) separately identify carrier charges from taxes on billing statements; (7) provide customers the right to terminate service for changes to contract terms; (8) provide ready access to customer service; (9) promptly respond to customer inquiries and complaints received from government agencies; and (10) abide by policies for protection of customer privacy.

²³ Id., page 15.

²⁴ Id., page 3.

²⁵ Id., page 16.

²⁶ Id., pages 16 to 18.

²⁷ Id., pages 8 and 9.

²⁸ Id., page 9.

- The Applicant committed to a build out plan (that could change over time), for the first year and one-half of its ETC designation.²⁹

III. Application Of The Commission's Virginia Cellular Public Interest Analysis To Nextel Demonstrates That Nextel's ETC Petition Should Be Denied

Based on the information contained in Nextel's Petition, the following analysis of the five public interest areas in the Commission's Virginia Cellular Order would compel the Commission to deny Nextel's ETC petition:

1. Demonstrate the benefits of increased competitive choice as a result of its

ETC designation. If the Commission's rather minimal Virginia Cellular test is applied, Nextel does provide a choice of providers. Use of this test, as applied by the Commission in the Virginia Cellular proceeding simply has the effect of continuing the use of support funding, at odds with the Act's provisions to artificially and anti-competitively aid existing competitors in rural markets.

A more thorough public interest analysis would conclude that because Nextel already provides service, without federal support, the benefits of competition brought by Nextel to the Florida market have already occurred, are occurring and will continue to occur even if Nextel is not designated as an ETC. As a consequence, designating Nextel as an ETC will not bring additional competitive choices and benefits.

2. Demonstrate the impact of multiple ETC designations on the Universal

Service Fund. The Commission in Virginia Cellular concluded that the designation of Virginia Cellular would not dramatically burden the fund.

²⁹ Id.

If each ETC petition is viewed in isolation, and if a needs test is not applied, the same flawed rationale and incomplete analysis can be applied to the Nextel Petition.

3. Demonstrate the unique advantages and disadvantages of the competitor's

service offerings. If the Commission's Virginia Cellular rationale is applied to Nextel, Nextel (a) Has larger calling scopes (however much higher usage charges of 35 to 40 cents per minute above the block of time are substituted for toll charges); (b) Provides mobility (even though this is not a supported universal service); (c) Provides access to basic and emergency services (assuming it has facilities to provide service or quality usable service throughout the service area); and (d) Offers a variety of local usage plans, some of which include a large number of minutes (even though the rates for the plans may not be just, reasonable and affordable and may fully recover their costs, without support).

4. Demonstrate commitments made regarding quality of telephone service

provided. Nextel observes in footnote 8 of its petition that "[W]ireless service is inherently affected by conditions unique to wireless service providers...Geography, atmospheric conditions and man-made radiofrequency and physical structure interference may at times reduce or increase a wireless user's coverage area."³⁰ Apparently this is Nextel's oblique way of saying that it has dead spots and areas of poor coverage in the area for which it seeks ETC designation.

³⁰ Nextel Petition for Designation as an Eligible Telecommunications Carrier in the State of Florida, dated September 16, 2003.

Nextel has offered no specific commitment to improve or build additional facilities to alleviate these problems, nor has it offered to report customer complaints to the Commission. Nextel has not even committed to the Commission that it will follow the CTIA “self policing” code.

5. Demonstrate the competitive carrier’s ability to provide the supported services throughout the designated service area within a reasonable time.

Nextel provides a coverage map (Attachment 3 in its Petition) that is based on a three-watt wireless phone³¹ and states that it will respond to a “reasonable request” for service from customers.³² First, most cellular phones are 0.6 watts, not 3 watts and therefore, the map in Attachment 3 of the Nextel Petition substantially overstates Nextel’s coverage area within its licensed service area. Second, there are no parameters placed around “reasonable request.” Nextel offers nothing to insure that customers will in fact be provided service upon request and nothing to demonstrate that it is or will be able to provide the supported services through the designated service area within a reasonable time. As a consequence, because Nextel’s Petition does not meet the public interest criteria and analysis established by the Commission in the Virginia Cellular Order, Nextel’s Petition should be denied by the Commission.

³¹ Id., page 6, footnote 9.

³² Id., page 6.

**IV. The Commission's Requirements In The Virginia Cellular Order Are A First Step,
But Additional Public Interest Analysis and Criteria Are Necessary To Meet The Act's
Requirements**

The Commission's additional public interest analysis is an improvement over the prior presumption that the public interest would be served simply because an additional carrier competes in the rural market. However, FW&A and the ILECs it represents believe that to insure the public interest is truly served, a fact-based analysis is necessary. The Commission's new analysis moves minimally in the direction of a fact based analysis, but the Commission failed to factually address at all, or fully address four fundamental tenants of a public interest test:

1. Services for which support is provided must be the services defined by the Joint Board and the service offerings must meet the Act's universal service requirements.
2. The applicant must prove a need for the funding. If support funds are provided to an applicant without this test, the public is worse off because they are paying for unnecessary ETC funding.
3. If the Commission is going to allow an applicant time to provide facilities so that the applicant can serve, with high quality service, all customers requesting service, there must be accountability by the applicant for promises made to the Commission regarding use of support funding to improve service coverage and service quality.
4. There should be measurable competitive benefits – not just the rhetoric that typically accompanies a discussion of the benefits of competition.

If as a result of designating an additional ETC in a rural ILEC area, there is no increased customer choice, no lowering of prices, no efficiency improvements, no introduction of differing technologies and services, etc., then there is no competitive benefit.

All of these public interest issues are measurable, but were not addressed, or were only partially addressed by the Commission's Virginia Cellular Order.

V. Application Of The Additional Public Interest Criteria and Analysis to Nextel's

Petition

The Commission issued the Virginia Cellular Order in advance of the expected Joint Board recommendation regarding ETC criteria. The Commission is considering other ETC applications and is now requesting comments on the Nextel ETC petition. In all additional ETC considerations of the Commission, including the Nextel Petition, the Commission should factually evaluate the additional public interest areas:

1. Analysis of Services Offered by an ETC.

- a) In Virginia Cellular, the Commission allowed support to be provided to Virginia Cellular because of the benefits of mobility. No one can deny that mobility is an advantage of cellular service, but mobility is not a defined universal service and thus cannot be supported by federal universal service funding and should not be accorded any status in a public interest test.
- b) The Act in Section 254 requires that universal services be offered at just, reasonable and affordable rates. The Commission, based on the discussion in its Virginia Cellular Order, recognized that Virginia Cellular offered a variety of local service

offerings, but made no determination as to whether those offerings were at a just, reasonable and affordable rate with a reasonable level of minutes included in the purchased block of time. This analysis should be performed by the Commission to insure that rates and usage levels included comply with the Act and that the service packages that do not comply with the Act are not supported. In other words, the Commission should affirmatively designate which services, rates and usage levels qualify for support by (a) Determining if the rate plan currently covers the ETC's costs and thus requires no support, (b) Evaluating the Applicant's plans to determine if they have rates that fall below a rate level for the state in question that is just, reasonable and affordable (for instance, the average residential rate for the rural ILECs in which the ETC designation is sought) and that (c) The service includes minimum level of local usage (for instance, an amount comparable to the rural ILEC's average local customer usage for the rural service areas in which the ETC designation is sought).

Attachment 1 to these comments is a summary and analysis of Nextel's service and rate plans for Florida.

- c) One of the universal services that must be provided is toll blocking. The purpose for toll blocking is to insure that a low-income customer does not incur per-minute charges, but still have access to basic local calling. If an applicant is to be designated as an ETC, the Commission should insure that the ETC implements per-minute blocking and not just "toll" blocking. If the Commission does not take this action, the ETC's low-income customers may have their "toll" blocked, but still end up with

large and unaffordable bills because of originating local and terminating per-minute charges in excess of the block of time purchased by the customer.

2. Analysis of the Need for Funding.

- a) In the Virginia Cellular Order, the Commission made no analysis of the overall cost based need for support. This analysis must be made, particularly when the Applicant will not be required to serve initially or for some period the entire service area of the rural ILEC. Quite likely, the Applicant will have lower costs because it initially only serves higher volume areas (highways) and higher density areas. For CMRS providers such as Nextel, publicly available cost data is available from their Securities and Exchange (SEC) Reports. This information is average system wide data for the CMRS provider, but when evaluated, (a) Provides cost data comparable to that used to demonstrate an ILEC's cost based need for support and (b) Provides an universal service cost analysis like that used for the large ILECs (BOC's, etc.) for which support is based on the average of the costs of their urban and rural service areas. If the Commission wants to evaluate the CMRS carrier's costs for a particular study area, it is likely that this data can be produced by the applicant carrier. The minimal analysis that is required to collect, prepare and review these costs, or the minimal effort that would be required by the applicant to provide this data is clearly in the public interest to insure that the applicant needs the support and the support funds generated by customers throughout the nation is not a unneeded revenue windfall for the applicant. Attachment 2 to these Comments demonstrates for Nextel how this cost and revenue analysis can easily be made and demonstrates that Nextel has no need for federal universal service support.

- b) Applicant cost data is also required to determine if individual rate plans produce annual revenues per subscriber that exceed the cost of service. These plans clearly should not be supported because there is no need for the support. See Attachment 1 to these Comments for a demonstration of how this analysis has been made for Nextel's services.

3. Accountability For Service Area Coverage And Improvements In Quality Of Service.

- a) The Act requires that an ETC provide service throughout the rural ILEC's service area. This requirement was to insure competitive neutrality among providers and to insure that an ETC could not serve only the low cost portions of rural ILEC's service areas and still receive support. The Commission has apparently decided that an ETC that currently only serves a portion of a rural ILEC service area can build out its network over a reasonable period in order to meet the Act's total service area requirement. In the Virginia Cellular Order, the Commission accepted Virginia Cellular's commitment that it will build new towers for the first year and one-half after its ETC designation, although Virginia Cellular indicated that its plans may change. In addition to this commitment the Commission must insure that the commitment is met by:

- 1) Requiring the ETC to provide a specific build-out plan that shows the current placement of facilities and a build-out plan that demonstrates where the ETC will provide additional facilities (and what facilities will be placed) to serve all existing customers in the service area.

- 2) Setting specific timelines (such as one to two years from the date of ETC designation) by which the facility build out plan will be completed.
- 3) Imposing penalties, including loss of ETC designation if the commitments are not met.

Nextel has made no commitments in its Petition to construct facilities to insure that service is provided throughout the service area of the rural ILECs in whose service area it seeks to be designated as an ETC.

- b) If designated as an ETC, the carrier is, based on the Act, required to provide service to all requesting customers. In the Virginia Cellular Order, the Commission related the steps that Virginia Cellular will take to attempt to provide service to any requesting customer and required the carrier to file an annual report with the Commission detailing the number of unfulfilled service requests. The Commission should require that these steps be undertaken within a reasonable time period. The determination as to the remedy should be made within a reasonable period (for instance one to two weeks) and service provided, if based on steps 1 to 6 within a reasonable period (for instance, within one month of the customer request). If an additional cell site is required, service should also be provided within a reasonable period (for instance within four months of the customer request). Finally, subsequent to completion of the facilities build out plan, if any unfulfilled requests for service are reported to the Commission, the Commission should require a detailed written explanation, which, if unsatisfactory, would result in revocation of the carrier's ETC status.

Nextel has made no substantive commitment in its Petition that it will provide service to all requesting customers within a reasonable time frame in the rural ILEC's area in which it seeks to be designated as an ETC.

- c) The Act also requires that an ETC must provide high quality services to all customers in the rural ILEC's service area. To track customer service complaints, the Commission required Virginia Cellular to (a) Annually provide the number of customer complaints per 1,000 handsets; and (b) Report annually the number of customers that were denied service. Virginia Cellular also agreed to abide by the CTIA customer code. The Commission, if it is to have usable customer complaint data that can be used to enforce the provision of quality service by ETC's must have additional reported data and data specific to the area for which Virginia Cellular may receive support as a ETC. A breakdown of customer complaints, such as that shown on Attachment 3 to these Comments, is essential.

Nextel has made no commitment in its petition that it will provide any customer complaint data to the Commission.

4. Measurable Competitive Benefits.

Nextel claims in Section IV of its Petition³³ that public interest benefits will flow from competition in rural ILEC areas as a result of its designation as an ETC in rural ILEC areas. What Nextel chooses to ignore is that any benefits of competition have already occurred, are currently occurring and will occur in the future because of existing competition among CMRS providers in rural ILEC areas and among CMRS providers and rural ILECs. In other words, any short and long term benefits of that competition are occurring and will continue to occur whether or not Nextel is

³³ Id., pages 7 to 9.

designated as an ETC. The designation of Nextel as an ETC is unrelated to any public interest benefits of competition and no additional competitive benefits will accrue to the citizens of rural Florida if Nextel is designated as an ETC by the Commission. Nextel has presented no measurable evidence of competitive benefits and thus there is no evidence as to why it is in the public interest to support Nextel's ETC designation when CMRS competitive carriers already serve and bring the benefits of competition to rural ILEC areas in which Nextel seeks such designation. For instance, if it were designated as an ETC by the Commission, Nextel has not:

- Proposed lower rates that are currently offered by Nextel.
- Proposed any new or innovative rate plans or packages, other than those already offered.
- Demonstrated that ETC designation would cause the introduction of new technologies or advanced services, other than those already provided.
- Promised to increase its efficiency and lower its costs.
- Etc.

VI. Summary Of Comments

The Commission's Virginia Cellular public interest analysis is an initial step in the right direction for analysis of the public interest for additional ETC designations in rural ILEC service areas. This analysis, when applied to Nextel's ETC request in Florida demonstrates that it is not in the public interest to extend such a designation to Nextel.

The additional public interest analysis discussed in these Comments, when applied to Nextel further demonstrates that the Commission should deny Nextel's ETC petition:

- a) Nextel will not provide just, reasonable and affordably priced services that include a reasonable number of local exchange minutes.
- b) Nextel does not have a cost-based need for the support and therefore the support revenues will simply be a revenue windfall for Nextel's stockholders.
- c) Nextel does not provide adequate service area coverage and quality of service. Nextel has not committed to any service area coverage or service quality improvements.
- d) Nextel provides no measurable additional competitive benefits that will result from the ETC designation.

For these reasons, the Commission should deny Nextel's petition to be designated as an ETC in rural ILEC service areas in Florida.

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